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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,277	07/14/2000	KLAUS-DIETER HAMMER	051009/0125	1514

22428 7590 08/21/2003

FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER
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SIMONE, CATHERINE A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/600,277

Applicant(s)

HAMMER ET AL.

Examiner

Catherine Simone

Art Unit

1772

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*Response to Arguments*

Applicant's arguments filed August 7, 2003 have been fully considered but they are not persuasive.

Applicant argues that "With the casing as disclosed by Hammer '737 the object of providing a hot-water resistant casing was not achieved, not even with the embodiment in which the casing contains the additional polymers as recited in col. 3, 1. 48-55, of the reference. The polyesters, polyolefins, polyamides, ethylene/ethylacrylate/maleic anhydride copolymers or PVP-copolymers do not form the above-mentioned matrix which imparts resistance to steam and hot or boiling water. In the casing as disclosed by Hammer '737 and comprising the additional polymers the starch is leached out by hot or boiling water and the casing finally disintegrates. In Examples 2 and 3 of Hammer '737 the production of a scalded sausage is described. But in these Examples the scalding requires dry heat, not hot steam or hot water."

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "resistance to steam and hot or boiling water") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues that "In order to resolve the deficiencies of Hammer '737, the PTO has attempted to combine Hammer '737 with Pophusen. Applicants, however, respectfully submit that such a combination is improper (1) because the PTO has failed to set forth any

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motivation for combining the references and (2) because the PTO has failed to establish a reasonable expectation of success based on the proposed combination.”

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hammer teaches a tubular food casing casing produced from a) a thermoplastic starch (see col. 3, line 11) and b) at least one other polymer with a weight ratio of a):b) being in the range from 90:10 to 10:90 (see col. 3, lines 54-56). However, Hammer fails to teach the at least one other polymer being selected from the group as recited in claim 13. Pophusen et al. is merely cited for teaching that it is old and well-known in the analogous art to have polyesterurethane, which is a polymer selected from the group recited in claim 13, for the purpose of producing a tubular food casing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to provide polyesterurethane in Hammer as suggested by Pophusen et al. in order to produce a tubular food casing.

Applicant further argues that “Andra teaches a tubular food casing comprising a web of material comprising a naturally occurring polymer curved along its longitudinal axis such that the edge regions are overlapping, a layer of substantially water-insoluble adhesion-promoting resin covering the inside and/or outside of the web at least in the area of the edge regions, a strip

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of film applied to the longitudinal edge regions, and layer of a pressure sensitive adhesive interposed between the strip of film and the edge regions of the web material (col. 4, lines 43-63). It is the layer of the pressure-sensitive adhesive which may comprise a filler, such as kaolin, glass beads, etc. (col. 13, lines 40-44). A seamless casing as presently claimed does not have or need any adhesive layers. Accordingly, Applicants submit that a person of ordinary skill in the art of making food casings thus would not have found any motivation to employ the fillers as taught by Andra in the seamless sausage casing of Hammer '737."

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, however, Andra is merely cited for teaching that it is old and well-known in the analogous art to employ fillers in the production of a tubular food casing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to provide fillers in Hammer as suggested by Andra in order to produce a tubular food casing.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703)605-4297. The examiner can normally be reached on 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Catherine Simone  
Examiner  
Art Unit 1772  
August 20, 2003

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

8/20/03